

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

74-1153

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P/S

To be argued by
GINO E. GALLINA

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 74-1153

UNITED STATES OF AMERICA,

Appellee,

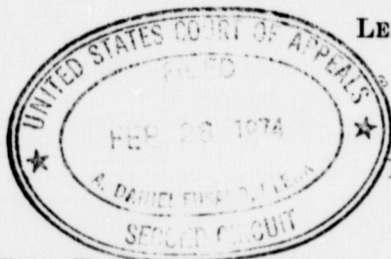
—v.—

ARNOLD SQUITIERI,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S BRIEF



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APPELLANT'S BRIEF

Preliminary Statement

The defendant was indicted in the Southern District of New York and charged with eight counts of conspiracy to violate the tax laws, income tax evasion and willful failure to file an income tax return. In October of 1973, the defendant pled guilty to two counts of failure to file an income tax return (Counts 2 and 3), and one count of income tax evasion (Count 8). On January 11, 1974, the defendant was sentenced by the Honorable Milton Pollack to a prison term of nine months and fined \$2,500 on Count 2; a prison term of nine months and fined the sum of \$2,500 on Count 3; a prison term of four years and fined the sum of \$5,000 on Count 8. All prison sentences were made to run concurrently and the total fine was \$10,000. The defendant was remanded and is presently serving his sentence.

ARGUMENT

POINT I

The appellant's sentence of four years imprisonment and a fine of \$10,000 was excessive and an abuse of discretion.

While appellant is fully aware that sentence and its attendant procedures are in the discretion of the trial court (*United States v. Warren*, 453 F.2d 738 (C.A. 2, 1972); *United States v. Roman and Lee*, Docket Nos. 73-1483, 73-1484, Slip Op., Sept. 26, 1973), that is not to say that an abuse of discretion is to be tolerated. The imposition of a sentence of four years was incredibly harsh and an abuse of discretion. While no crime is to be tolerated, one must always weigh the imposition of punishment with great care. Quite obviously, income tax evasion is not a crime involving violence, mayhem or heinous activity. To properly fashion a just sentence, the court must also take into consideration the background of the individual involved.

The appellant is a man of 37 years who is married and the father of three small children. He lived with his wife and children in a home which they rent in New Jersey. Despite his few years, he is not in good health. An accident which required the fusion of several discs has prevented him from engaging in work of a heavy nature. Although the appellant has had prior brushes with the law (two prior federal narcotics convictions), he has completed the service of that time and has sought to return to society and his family in a quiet, unobstreperous way. As the probation report indicates, the appellant has earned his living for many years as a gambler. Again, this occupation, while not an exemplary one, is most assuredly not deserving of such severe sanction.

The tenor of our times is certainly an important factor for the court to consider when it calculates the punishment to be inflicted. While the sentence imposed on one defendant does not bear directly on that to be imposed on another, it certainly is a consideration. In the Southern District within the past year, a number of individuals have received prison terms for tax evasion. Among the individuals so prosecuted were Murad Nersessian and Louis Inglese. Both of these men were alleged by the Government to be major narcotics dealers. Murad Nersessian was sentenced to two years, and Louis Inglese to eighteen months. The disparity is appalling. So too in recent months, this country has been subjected to perhaps the greatest scandal to arise within the higher echelon of the Federal Government. With the facts of that unfortunate incident fresh in the minds of all Americans, there is no need to go into any detail here. Suffice to say that an ignoble career froth with bribery and corruption terminated with a plea of *nolo contendere* entered to cover a tax evasion count. The sentence imposed was *probation*.

If such was deemed just punishment for the Vice President of the United States, who has had all of the advantages of wealth and education, why should a man born in the ghetto who never had the benefit of a high school education be so sternly dealt with? When one adds that the Vice President's plea covered a great number of charges, while here the allegations were solely that of tax evasion, the inequities become even more apparent.

While there is no absolute measuring stick for the imposition of proper sentence, it would seem obvious that the punishment imposed by fellow jurists upon defendants charged with the same crime would at the very least be an influence. It is obvious that the sentencing court in this case felt unpersuaded by the rulings of his colleagues. To let stand such a harsh sentence in light of the prior sentences meted out in similar cases is both unwise and unjust.

The imposition of a sentence such as imposed on Mr. Squitieri truly reflects the sense of justice of the man whose philosophy is implemented by such a rash judgment. On March 14, 1973, the President of the United States sent a message to the Congress, urging enactment of a so-called "Criminal Reform Act". The President stated: "... the only way to attack crime in America is the way crime attacks our people—*without pity. Our program is based on this philosophy . . .*" (emphasis added). The President's program included long, mandatory prison sentences, the removal of the possibility of parole or probation, the removal of the defense of insanity, and the relegation of prison facilities to a job of retribution and not rehabilitation. In keeping with this philosophy, this administration also urged the restoration of the death penalty for many crimes. History is often filled with conflicting views espoused by prominent men. Needless to say, whoever occupies the office of the President of the United States achieves a certain prominence in spite of his personal characteristics. On the other hand, there are those men who, even if they had never held a great office, history would always immortalize. Sir Winston Churchill. The mere mention of this great man brings the great and small to hear the attitude and position he assumed with regard to any important issue.

In 1910, Winston Churchill, as head of the Home Office of the British government, made a speech in the House of Commons about criminal justice. He talked of the need for decent, humane criminal administration of the criminal laws. He recognized that a nation's attitude towards offenders against its laws is important, not just to the offenders, but to the quality of the nation as a whole. A nation, he felt, which is not compassionate towards its criminals, will be lacking in compassion towards all of its people. In fact, he observed that the mood and temper of a country in regard to the treatment of crime and criminals is an unfailling test of the quality of a nation's civilization.

Can our courts follow the Nixon philosophy and still claim to be houses of justice? How can a sentence which smacks of such obvious governmental vindictiveness be allowed to stand?

The sentence imposed in this case truly goes from the ridiculous to the absurd. If the term of imprisonment in and of itself was not grossly abusive, the Court saw fit to insure a life term of financial incarceration.

The appellant was born to a family of very limited means in the City of New York, his skills are limited and his earning power even further hampered by poor health. He is a man who successfully overcame addiction and tried desperately to eke out a living for himself and his family. The amount of taxes that the appellant owes from his gambling activities will result in his impoverishment for almost his entire life. Despite the obvious awareness of this situation, the sentencing court imposed a fine of \$10,000.

One finds it difficult to fathom the reasoning of the sentencing court. If the appellant is ever to be rehabilitated and again contribute to society through honest employment, such a financial burden of this great magnitude must be removed. A man of such limited industrial skills can never hope through honest employment to earn such great sums of money so as to be able to meet the Government-imposed financial obligations. The imposition of such a fine relegates the appellant and his family to a state of poverty for virtually their entire lives. Even the most insensitive individual would see that this onerous financial burden would severely retard if not completely destroy any chance the appellant had for rehabilitation. Perhaps in light of the severe term of imprisonment, it was intended to be a firm stumbling block in appellant's efforts to achieve financial independence through honest employment. If indeed the true administration of justice is the firmest pillar of good government, then such abuses must be eliminated. The

removal of this enormous fine will permit the appellant and his young family to enjoy the fruits of his honest labors and as such provide the natural incentive to remain in the normalcy of our society.

CONCLUSION

Wherefore, the appellant's sentence of imprisonment should be reduced to two years and the fine of of \$10,000 set aside in its entirety.

Respectfully submitted,

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